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09/971,797	10/05/2001	Michael Kauschke	34303/49	3584

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EXAMINER

YAO, SAMCHUAN CUA

ART UNIT PAPER NUMBER

1733

DATE MAILED: 09/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/971,797

Applicant(s)

KAUSCHKE ET AL.

Examiner

Sam Chuan C. Yao

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 15-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 15-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7 6) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. Counsel's argument regarding the restriction requirement is moot, in view that the restriction requirement has been withdrawn. Note: the withdrawal of the restriction requirement is not a result of the merit of Counsel's argument, but in light of newly found references.

2. On page 1 of Counsel's response, claims 11 and 14 were indicated to be canceled; and, then on page 3, claims 11-13 were also indicated to be canceled.

Therefore, it is assumed that, **claims 11-14 were canceled by Applicant.**

Claim Objections

3. Claim 10 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. See Paper No. 5 numbered paragraph 6.

Examiner agrees with Counsel that Applicant is "*entitled to define his invention in a reasonable number of different ways*". However, a dependent claim must further

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limit the recited limitations to which it is dependent to. Otherwise, the recited dependent would not only be redundant, but also confusing. In this case, this claim is merely an alternative characterization of basically the same limitation. Contrary to Counsel's assertion, Examiner strongly disagrees with Counsel that, the limitations in claims 1 and 10 "*are similar, but not necessarily identical.*". It is suggested for Counsel to provide an actual example where the limitation in step (B) in claim 1 would not necessarily have the recited characteristic in claim 10.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-7, 10, and 15-27 are rejected under 35 U.S.C. 102(b) as being anticipated by France 2,411,260.

With respect to claims 1, 3, 10, 15 and 26-27, France '260 teaches, in one embodiment illustrated in example 1, forming a filamentary non-woven fabric, the filament being continuously and randomly deposited onto a conveyor belt (page 5 full paragraph 2, see US Patent 3,542,615 for details); passing the web to a pair of embossing rolls having a raised bonding configuration, wherein, each the

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projecting parts of the raised bonding configuration comprises a major axis and a minor axis, and having a relative distance ratio between horizontal distance (d) and vertical distance (d') of around 1.3:1 (page 4; page 6 full paragraph 2-3; figures 2-5); and, bonding the web such that the "*major axis of the projection parts parallel to the machine direction*" of the non-woven fabric, thereby forming a bonded web having properties that are "*very anisotropic*" (page 9; example 1). Although not explicitly disclosed, the "*very anisotropic*" non-woven fabric in this example must NOT have equal tensile strength and equal percent elongation in a cross-machine direction as compared to a machine direction of the web, because the bonding areas between the two directions are not equal. Note the ratio (d/d') is around 1.3. Moreover, as clearly illustrated in figures 2-5, the bonding pattern density in the horizontal and vertical directions is substantially uniform.

With respect to claim 2, since the ratio of the vertical distance (d') and horizontal distance (d) or vice versa of the projection parts ranges from about 1:1.3 to about 1:5 (page 8 lines 1-5), the relative total bonding area between horizontal and vertical directions must inherently either fall within or overlap the recited range in claim 1.

Note: Where ... the claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes, the PTO can require an applicant to prove that the prior art products do not necessarily or inherently possess the characteristics of his claimed product. **Whether the rejection is based on "inherency" under 35 USC § 102, on prima facie obviousness" under 35 USC § 103, jointly or alternatively, the burden of proof is the same, and its fairness is evidenced by the PTO's inability to manufacture products or to obtain and compare prior art products." In re Best, 562 F2d 1252, 1255, 195 USPQ 430, 433-4 (CCPA 1977).**

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With respect to claim 4 and 7, see figure 5.

With respect to claim 5, page 6 last paragraph, particularly last 4 lines.

With respect to claims 16-22 and 24-25, these claims are essentially repetitions of various combinations or alternative ways of characterizing above rejected claims, for the same reasons set forth above, this claim is taken to be anticipated by France '260.

8. Claims 1-3, 10, 15-21, 24-25 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Lunn et al (US 4,999,235). See the attached magnified print out of figure 2. Note this figure is an actual "*optical micrograph*" of a non-woven fabric.

D_y (edge to edge) is 13 mm; D_x (edge to edge) 17 mm

D_y (center to center) is 24 mm; D_x (center to center) 30 mm

9. Claims 1-3, 10, 15-21, 24-25 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Marmon et al (US 6,465,073). See the whole disclosure.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 4-5, 8-9 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marmon et al (US 6,465,073) as applied to claim 1 above.

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Since recited bonding configurations are conventional in the art; and since one in the art would have readily recognized and appreciated that segmented bonding configurations other than linear bonding configuration can also be effectively be used in the process of Marmon et al, these claims would have been obvious in the art.

Allowable Subject Matter

12. The following is a statement of reasons for the indication of allowable subject matter:

Although the recited bonding configuration recited in claim 22 is known per se in the art, there is no motivation in the art to use the configuration recited in this claim to any of the above references.

Response to Arguments


13. Applicant's arguments with respect to recited claims have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Chuan C. Yao whose telephone number is (703) 308-4788. The examiner can normally be reached on Monday-Friday with second Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael W Ball can be reached on (703) 308-2058. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0651.


Sam Chuan C. Yao
Primary Examiner
Art Unit 1733

Scy
09-09-03